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FILED

2008 OCT 20 AM 9:08

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIABy: OMM DEPUTY

7 Attorneys for the Plaintiff

13 Leonard Owings

14 Plaintiff,

15 v.

16 Hunt & Henriques and Arrow
17 Financial Services,

18 Defendant.

19
20 Case Number:
08 CV 1931 L NLS
21 Complaint For Damages

22 Jury Trial Demanded

23 INTRODUCTION

24 1. The United States Congress has found abundant evidence of the use of
 25 abusive, deceptive, and unfair debt collection practices by many debt
 26 collectors, and has determined that abusive debt collection practices
 27 contribute to the number of personal bankruptcies, to marital instability, to the
 28 loss of jobs, and to invasions of individual privacy. Congress wrote the Fair
 Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter
 "FDCPA"), to eliminate abusive debt collection practices by debt collectors,

HYDE & SWIGART
San Diego, CaliforniaCR **ORIGINAL**

1 to insure that those debt collectors who refrain from using abusive debt
2 collection practices are not competitively disadvantaged, and to promote
3 consistent State action to protect consumers against debt collection abuses.

4 2. The California legislature has determined that the banking and credit system
5 and grantors of credit to consumers are dependent upon the collection of just
6 and owing debts and that unfair or deceptive collection practices undermine
7 the public confidence that is essential to the continued functioning of the
8 banking and credit system and sound extensions of credit to consumers. The
9 Legislature has further determined that there is a need to ensure that debt
10 collectors exercise this responsibility with fairness, honesty and due regard
11 for the debtor's rights and that debt collectors must be prohibited from
12 engaging in unfair or deceptive acts or practices.

13 3. Leonard Owings, through his attorneys, brings this action to challenge the
14 actions of Hunt & Henriques (H&H), and Arrow Financial Services (Arrow),
15 with regard to attempts by Defendants to unlawfully and abusively collect a
16 debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.

17 4. Plaintiff makes these allegations on information and belief, with the exception
18 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
19 Plaintiff alleges on personal knowledge.

20 5. Unless otherwise stated, Plaintiff alleges that any violations by Defendants
21 were knowing and intentional, and that Defendants did not maintain
22 procedures reasonably adapted to avoid any such violation.

23 **JURISDICTION AND VENUE**

24 6. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. §
25 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

26 7. This action arises out of Defendant's violations of the Fair Debt Collection
27 Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair
28

Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 (“RFDCPA”).

8. Because Defendants do business within the State of California, personal jurisdiction is established.
9. Venue is proper pursuant to 28 U.S.C. § 1391(c).

PARTIES

10. Plaintiff is a natural person who resides in the City of Winchester, County of
Riverside, State of California.

11. Plaintiff is a member of the United States Army and an active duty servicemember as defined in section 101(d)(1) of title 10, United States Code, and has been an active duty member of the United States Army since 2003.

12. Defendant H&H is from the City of San Jose, the County of Santa Clara, and the State of California.

13. Defendant Arrow is from the City of San Jose, the County of Santa Clara, and the State of California.

14. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

15. Defendant is a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is therefore a debt collector as that phrase is defined by 15 U.S.C. § 1692a(6).

16. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a “debtor” as that term is defined by California Civil Code § 1788.2(h).

17. Defendant, in the ordinary course of business, regularly, on behalf of himself, herself or others, engages in debt collection as that term is defined by

California Civil Code § 1788.2(b), is therefore a debt collector as that term is defined by California Civil Code § 1788.2(c).

18. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a consumer debt and "consumer credit" as those terms are defined by Cal. Civ. Code § 1788.2(f).

FACTUAL ALLEGATIONS

19. At all times relevant to this matter, Plaintiff was an individual residing within the State of California.

20. At all times relevant, Defendants conducted business within the State of California.

21. Sometime before February 7, 2008, Plaintiff is alleged to have incurred certain financial obligations.

22. These financial obligations were primarily for personal, family or household purposes and are therefore a “debt” as that term is defined by 15 U.S.C. §1692a(5).

23. These alleged obligations were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and are therefore a “debt” as that term is defined by California Civil Code §1788.2(d), and a “consumer debt” as that term is defined by California Civil Code §1788.2(f).

24. Sometime thereafter, but before February 7, 2008, Plaintiff allegedly fell behind in the payments allegedly owed on the alleged debt. Plaintiff currently takes no position as to the validity of this alleged debt.

25. Subsequently, but before February 7, 2008, the alleged debt was assigned, placed, or otherwise transferred, to Defendants for collection.

1 26. On or about February 7, 2008, Defendants filed a lawsuit against Plaintiff for
2 the alleged debt in the County of San Bernardino, California, state case
3 number CIVSS801559.

4 27. Defendants brought this legal action against Plaintiff unrelated to real
5 property in a judicial district or similar legal entity that is outside of where
6 Plaintiff allegedly signed the contract sued upon and is outside the judicial
7 district or similar legal entity where Plaintiff resided at the commencement of
8 the action. This conduct by Defendants violated 15 U.S.C. § 1692i, as well as
9 Cal. Civ. Code § 1788.17.

10 28. Because Defendants brought this action in a county other than the county in
11 which Plaintiff incurred the consumer debt or the county in which Plaintiff
12 resided at the time such proceedings were instituted, or resided at the time the
13 debt was incurred, Defendants violated Cal. Civ. Code § 1788.15(b).

14 29. On or about July 30, 2008, Defendants obtained a default judgment against
15 Plaintiff through the use of false, deceptive, or misleading representations or
16 means in connection with the collection of a debt, including, but not limited
17 to, representing to the court that Plaintiff was not a member of the armed
18 services and was not, therefore, protected by the Servicemembers Civil Relief
19 Act when Defendants knew or should have known that was not true, and by
20 falsely representing to the court that Plaintiff had previously been legally
21 served a summons and complaint when, in fact, that was not the case.

22 30. Through this conduct, Defendant used a false, deceptive, or misleading
23 representation or means in connection with the collection of a debt.
24 Consequently, Defendant violated 15 U.S.C. § 1692e and 15 U.S.C. §
25 1692e(10), as well as Cal. Civ. Code § 1788.17.

26 31. Through this conduct, Defendant used an unfair or unconscionable means to
27 collect or attempt to collect a debt. Consequently, Defendant violated 15
28 U.S.C. § 1692f, as well as Cal. Civ. Code § 1788.17.

- 1 32. Plaintiff was reprimanded by his commanding officer because of the illegal
- 2 actions of Defendants.
- 3 33. Plaintiff was denied an important position because of the illegal actions of
- 4 Defendants.
- 5 34. The United States Army refused to renew Plaintiff's United States security
- 6 clearance because of the illegal actions of Defendants.
- 7 35. The actions of Defendants caused Plaintiff great stress, anxiety, emotional
- 8 distress, and other physical manifestations and injury.

9 **CAUSES OF ACTION**

10 **COUNT I**

11 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**

12 **15 U.S.C. §§ 1692 ET SEQ.**

- 13 36. Plaintiff incorporates by reference all of the above paragraphs of this
- 14 Complaint as though fully stated herein.
- 15 37. The foregoing acts and omissions constitute numerous and multiple violations
- 16 of the FDCPA, including but not limited to each and every one of the above-
- 17 cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.
- 18 38. As a result of each and every violation of the FDCPA, Plaintiff is entitled to
- 19 any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in
- 20 an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and,
- 21 reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from
- 22 Defendant.

23 **COUNT II**

24 **VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

25 **CAL. CIV. CODE §§ 1788-1788.32**

- 26 39. Plaintiff incorporates by reference all of the above paragraphs of this
- 27 Complaint as though fully stated herein.

1 40. The foregoing acts and omissions constitute numerous and multiple violations
2 of the RFDCPA.

3 41. As a result of each and every violation of the RFDCPA, Plaintiff is entitled to
4 any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory
5 damages for a knowing or willful violation in the amount up to \$1,000.00
6 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and
7 costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiff prays that judgment be entered against Defendant, and
10 Plaintiff be awarded damages from Defendant, as follows:

11 **COUNT I**

12 **FAIR DEBT COLLECTION PRACTICES ACT**

13 **15 U.S.C. §§ 1692 ET SEQ.**

14 42. An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
15 43. An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)
16 (2)(A);
17 44. An award of costs of litigation and reasonable attorney's fees, pursuant to 15
18 U.S.C. § 1692k(a)(3).

19 **COUNT II**

20 **ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

21 **CAL. CIV. CODE §§ 1788-1788.32**

22 45. An award of actual damages pursuant to California Civil Code § 1788.30(a);
23 46. An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code §
24 1788.30(b);
25 47. An award of costs of litigation and reasonable attorney's fees, pursuant to Cal.
26 Civ. Code § 1788.30(c).

TRIAL BY JURY

48. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Date: 10/16/08

Hyde & Swigart

By: _____

Joshua B. Swigart

Attorneys for the Plaintiff

HYDE & SWIGART
San Diego, California

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Leonard Owings

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart
411 Camino Del Rio South Suite 301, San Diego, CA 92108

DEFENDANTS

FILED

Hunt & Heniques and Arrow Financial Services

County of Residence of First Listed Defendant

2008 OCT 20 AM 9:08

Santa Clara

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, LIST THE LOCATION OF THE LAND INVOLVED.

Attorney's (If Known)

08 CV 1931 L NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	Citizen of Another State	PTF	DEF
	<input type="checkbox"/> 1	<input type="checkbox"/> 1		<input type="checkbox"/> 4	<input type="checkbox"/> 4

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	PROPERTY RIGHTS	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 861 HIA (1395f)	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 400 Other Fraud	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise				<input checked="" type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 891 Agricultural Act
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 861 HIA (1395f)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other Employment	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights		<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation

Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 1692 et seq.Brief description of cause:
FDCPA

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23DEMAND \$
\$75,000CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 10/16/08 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 156246AMOUNT 4350

APPLYING IFP

JUDGE

MAG. JUDGE

AKL W/24/08

ORIGINAL

**UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

156296 - TC

**October 21, 2008
09:04:03**

Civ Fil Non-Pris

USAID #: 08CV1931
Judge...: M. JAMES LORENZ
Amount.: \$350.00 CK
Check#: 2629

Total-> \$350.00

**FROM: OWINGS VS
HUNT**